LEE LOH

v.

COPLEX DEVELOPMENT & CONSTRUCTION (M) SDN. BHD.

HIGH COURT MALAYA, SHAH ALAM
MAHADEV SHANKAR J
[ORIGINATING SUMMONS NO. 24-80-89]
10 DECEMBER 1990

LAND LAW: *Lease of land by State Government - Restrictions on use - "Pertanian/ Bangunan" - Storage purposes - Lease subject to necessary approval - Default in rentals - Use of land contrary to restrictions - Null and void.*

CIVIL PROCEDURE: *Proper procedure for arrears and eviction - Facts not disputed - Originating summons - Rules of the High Court 1980 - Order 5 r. 4(2)(b), O. 89.*

On 28 January 1975, the Selangor State Government issued a lease of Lot 204 for a period of 30 years to L. On 8 January 1976, Lot 204 was transferred to the defendants C - the title contained "restrictions on interest" which ceased to operate on 27 January 1985. Under the restriction, Lot 204 could only be used for "Pertanian/Bangunan" purposes.

The adjoining Lot 203 was leased to the applicant A for 30 years and there also was a restriction on Lot 203 against leasing it without the collector's approval; this restriction expired on 23 June 1987.

A contends that on 1 February 1986 he was induced into signing a letter whereby A agreed to sell Lot 203 to C for storage purposes for 15 years subject to certain conditions which included an application for the necessary approval from the state authority.

C went into possession and erected a row of buildings as factories for production of parquet, boats and paper boxes and a furnace for disposing industrial waste from these factories; since January 1988, C also defaulted in the rental payments.

A's solicitors sent a demand for arrears of rental and forfeiture of the lease; C argued that A should have obtained consent for use of the land of storage purposes and thereby sought a reduction of rental. A asked C to remove their plant and to surrender the land; C did not do so.

A applied for a declaration that the purported lease was null and void and for C's eviction. Apart from a memorandum of appearance, C did not take any further step in the proceedings.

Held:

[1] (a)The applicant's claim for a declaration that the lease be declared void is misconceived because the letter dated 1 February 1986 was subject to formal approval being obtained;

(b) By going into possession straightaway C put themselves in a position where they had no legal title to a tenancy whilst the restriction against leasing was in force;

(c) However they paid the rentals due up to 31 January 1988 - therefore the legalities of the status of the parties during this period does not need to be decided here.

[2] As C had not shown any valid defence to the claim for arrears and the eviction, the Court granted judgment for rentals as claimed and ordered removal of C's structures by 31 December 1990.

[3] Although O. 89 RHC could not apply to the facts of this case, where the facts are not disputed, originating summons is the right procedure.

[Order accordingly.]

Legislation referred to:
Rules of the High Court 1980, O. 5 r. 4(2)(b), O. 89

For the plaintiff - K.H. Lee; M/s. Lee Kok Heng & Co.
For the defendant - Vadiveloo; M/s. Vadiveloo & Co.

JUDGMENT

Mahadev Shankar J:

This is an application for a declaration that a purported lease is null and void and for consequential orders.

On 28 January 1975 the Selangor State Government issued a lease for 30 years for two acres of land in Subang New Village to one Liew Chuan. This land is referred to as Lot 204.

The transfer of this land to the defendants (Coplex) was registered by the Collector on 8 January 1986. The "Restrictions in interest," on the title precluding dealings in the land ceased to operate upon the expiration of ten years from the date of registration (i.e. on 27 January 1985). The purpose of use of Lot 204 was stated to be "Pertanian/Bangunan". The word "Perusahaan" had been deleted under the categories for use. So industrial use was not permitted. This is confirmed by the nature of cultivation being stated as "Dwelling house and fruit trees," with an express condition, "No rubber."

The adjoining Lot 203 also two acres, was leased to the applicant for 30 years. There was a restriction in interest against it being leased without the Collector's approval, such restriction to cease upon the expiration of ten years from the registration of the lease on 24 June 1977.

On 1 February 1986 the applicant avers that Coplex got him to sign a letter whereby he agreed to let Lot 203 to Coplex for storage purposes for 15 years with effect from the 1 February 1986, subject to certain provisions. These were that the applicant would sign the applications for the necessary approvals to be obtained from the state authority. Coplex agreed to pay certain deposits and progressive increased rentals for specified periods within the duration of the tenancy. The letter further provided that upon the approval being obtained a formal lease agreement would be executed and registered whereupon the agreement contained in this letter would lapse.

Pursuant to this letter Coplex went into possession. The letter obliged them to pay RM500 per month till 31 January 1988 and RM1,000 per month from 1 February 1988 up to 31 January 1991.

Instead of using their own land for a dwelling house and fruit trees, Coplex put up a row of buildings used as factories for production of parquet, boats and paper boxes. Instead of using the applicant's land for storage purposes, Coplex erected on it a furnace for disposing industrial waste from these factories.

Since January 1988 Coplex have ceased to pay the applicant any rentals. As at 28 February 1990 rentals overdue amounted to RM26,000 and thereafter continued accruing at RM1,000 per month as aforesaid.

On 12 May 1989 the applicant's solicitors sent Coplex a demand notice for the arrears of rent and also gave notice of forfeiture of the lease. Coplex responded by saying the applicant should have got consent for use of the land for storage purposes and since such consent had not been obtained they wished to have the rental reduced to RM500 per month.

On 8 June 1989 the applicant's solicitors replied that an inspection of the land revealed it was being used for industrial purposes in breach of the agreement and required the plant to be removed in 28 days and the land surrendered. Coplex did not comply. The rentals in arrears were not paid.

So the applicant commenced these proceedings by way of originating summons on 5 October 1989.

Apart from filing a memorandum of appearance on 7 December 1989 Coplex took no further step in the proceedings.

The applicant had filed an affidavit-in-support of the original application and a supplementary affidavit on 30 June 1990, both of which were duly served. The facts in these affidavits have not been contested by Coplex. Consequently this originating summons proceeds on the basis of facts which have not been disputed and must therefore be deemed to be admitted.

The first point to be noted is that the restriction in interest as to Lot 203 ceased to be operative on 23 June 1987. The claim for arrears of rental commences from January 1988 when the restriction against leasing the land was no longer in force.

Even though the letter dated 1 February 1986 was signed within the ten year period, it specifically provided for an application for the necessary approval.

Coplex undertook to produce the necessary documentation for execution by the application prior to submission for the approval required. It seems that this was not done, or if it was, Coplex did not feel constrained to wait till approval was obtained before they moved into possession.

The applicant's claim for a declaration that the lease be declared void is misconceived because the letter dated 1 February 1986, was subject to formal approval being obtained. By going into possession straightaway Coplex put themselves in a position where they had no legal title to a tenancy whilst the restriction against leasing was in force. However they paid the rentals due up to 31 January 1988. So the legalities of the status of the parties during this period does not need to be decided here.

The claim for arrears of rental however is pertinent as is the claim for eviction of Coplex. On the undisputed facts of the case, Coplex have not shown any valid defence to the applicant's claim.

I therefore give them judgment for RM35,000 being rentals due up to 30 November 1990, and proportionate rental for the days in December up to the date of this judgment.

I further make an order in terms of prayer 2 of the applicant's amended originating summons.

Finally I order that for each day that Coplex continues to remain on the applicant's land they pay mesne profits of RM66 per day till 31 December 1990.

If by that day the structures erected and the materials placed on the applicant's Lot 203 are not removed the applicant shall be at liberty to have them removed and claim the cost thereof as additional damages to be assessed by the Registrar of this Court.

The only substantial legal objection taken by the defendants solicitor was that the plaintiff's procedure was improper because O. 89 of the Rules of the High Court could not apply to such a case. That of course is correct. But where the facts are not disputed originating summons is the right procedure. See O. 5 r. 4(2)(b) of the Rules of the High Court 1980.

The claim for arrears and eviction could have been brought in the Sessions Court.

Furthermore it would appear that the use to which Coplex is putting both Lot 203 and Lot 204 is contrary to the permitted use to which these lands may be put. This Court should not encourage illicit conduct by acquiescence.

Coplex must pay the taxed costs of the applicant but on the Sessions Court scale.

Also found at [1991] 1 CLJ 766